

TEACHERS' RETIREMENT BOARD
INVESTMENT MEETING

SUBJECT: Quarterly Litigation Report

ITEM NUMBER: 14

ATTACHMENT(S): 1

ACTION: _____

DATE OF MEETING: May 1, 2002

INFORMATION: X

PRESENTER (S): Chris Waddell

The Quarterly Litigation Report has been prepared as directed by the Investment Committee.
Non-investment litigation will be reported in the Retirement Board meeting.

PROPERTY ADVISOR: CB Richard Ellis

Wilshire Landmark

CalSTRS v. Adriano (2001) CalSTRS Counsel: Cox, Castle & Nicholson. Tenant has failed to pay rent and abandoned premises. Advisor has initiated the collection process and had scheduled mediation in hopes of resolving case. **Mediation did not achieve settlement. Court has set trial date of May 21, 2002**

***CalSTRS v. Creative Digital (2002)** CalSTRS Counsel: Cox, Castle & Nicholson. Tenant vacated space but continued to pay rent through October 2001. Possession of property obtained as of December 3, 2001 via abandonment. Breach of Lease Complaint is being prepared for filing.

9720 Wilshire

***CalSTRS v. IAT Resources (2002)** CalSTRS Counsel: Cox, Castle & Nicholson. Tenant stopped paying rent in November 2001. Advisor drew down letter of credit which has been applied to rent arrearage. Tenant has agreed to vacate and signed Stipulation of Possession.

Northrop Plaza

Sinay v. CalSTRS (2000) CalSTRS Counsel: To be determined. Plaintiff allegedly fell on sidewalk and required transportation to and treatment at local hospital. Insurance carrier has been notified and will forward to law firm to defend claim.

Estate of Ngoenkaewthip v. CalSTRS (2000) CalSTRS Counsel: Ford, Walker, Haggerty & Baker. Action for wrongful death filed by heirs of a messenger for Express Courier. Our insurer, Zurrick Insurance Company, is investigating the facts of the incident. They will retain a law firm to defend CalSTRS. Plaintiff has filed Board of Control claim to initiate lawsuits against CalSTRS. Board of Control has rejected plaintiffs claim on April 12, 2001, which allows the estate to sue the State Teachers' Retirement System. A lawsuit has been filed naming the advisor, CB Richard Ellis and the elevator company. CalSTRS has been added to the list of defendants in the pending lawsuit. CalSTRS has been served with the complaint. Ford, Walker et al. has prepared a response, on behalf of CalSTRS. Initial discovery has been started and a complaint for intervention has been filed by the Workers Compensation carrier of the employer of the plaintiff for reimbursement of the death benefit paid by

them. Depositions were held in December 2001. Mandatory Settlement Conference was scheduled for **August 2002 as both parties continue with discovery. Status Conference is set for October 2002, and trial is set for October 16, 2002.**

Fine v. CalSTRS (2000) CalSTRS Counsel: Cox, Castle & Nicholson. Defendant Fine and Associates, a law firm and sub-tenant of Hospitality Restorations and Builders has filed an action against CalSTRS for not consenting to their Assignment and Assumption of the lease. The rejection of the consent was due to the advisor's concern with the ability of the tenant to meet the financial obligations under the lease. The premises have been returned to CalSTRS as a result of the Unlawful Detainer Action. CalSTRS filed a motion for Summary Judgment on Mr. Fine's complaint, which was successfully litigated in January 2002. Counsel is in negotiations with HRB, a co-defendant in this action to settle the case with them. **Mandatory Arbitration took place in February 2002 but was unsuccessful in resolving case. Trial was held on February 19, 2002 and the court found for CalSTRS on all issues pre and past arrearage rent, costs, attorney fees. The total amount of the judgment was in the sum of \$518,850.75. CalSTRS will initiate enforcement of judgment.**

Atlanta Industrial

CalSTRS v. Professional Sales Group (2001) CalSTRS Counsel: Cofer, Beauchamp. Tenant has defaulted on rent payment and abandoned space. Action has been initiated to obtain writ of possession. Tenant has personal guaranty of \$225,000 which advisor will pursue.

ALAMO QUARRY

CalSTRS V. Bungalow Home Studio (2000) CalSTRS Counsel: Ernie Zachary Park. Tenant has breached lease via non-payment. Attempts by the advisor to contact tenant to negotiate a settlement have gone unanswered therefore unlawful detainer action will be commenced to obtain possession and monetary judgment against tenant. Tenant has filed a Chapter 7 Bankruptcy staying the unlawful detainer action. Counsel for debtor has contacted CalSTRS counsel to discuss resolution of debtor through the Bankruptcy proceeding.

CalSTRS v. On the Border (2000) CalSTRS Counsel: The Law firm of Kerr - Wilson. Tenant breached lease via non-payment of rent. Legal action initiated which resulted in tenant vacating space and negotiations have resolved the past due rent. Plaintiff has filed bankruptcy and is requesting the court to allow an assignment of lease, to which CalSTRS advisor has filed objection. Tenant has rejected lease but is still making payments while attempting to get Court approval to assign lease.

Rancho Pacifica

CalSTRS v. AMS Logistics (2001) CalSTRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease via non-payment of rent. Three-day notice has been served on tenant, which resulted in tenant paying all arrearage. Advisor will monitor tenants payment schedule.

The Oaks

CalSTRS v. Nordic Track (2000) CalSTRS Counsel: Ernie Zachary Park. Tenant has filed Chapter 11 Bankruptcy. CalSTRS has filed proof of claim for lost rent.

CalSTRS v. Philman Imports (2000) CalSTRS Counsel: Ernie Zachary Park. Tenant has filed Chapter 7 Bankruptcy. CalSTRS has filed proof of claim for lost rents and an abandonment of the lease by tenant to obtain possession of space.

CalSTRS v. Babbages (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant has breached lease via non-payment. Unlawful detained has been filed and served on defendant.

CalSTRS v. Speedo (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant has filed a Chapter 11 Bankruptcy. Counsel will file Proof of Claim and monitor Bankruptcy.

CalSTRS v. Sweet Factory (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant's Parent Company has filed Bankruptcy in Delaware. Counsel will monitor Bankruptcy. **Proof of Claim filed with Court on behalf of CalSTRS for \$3,019.00.**

CalSTRS v. People's Pottery (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant has filed Chapter 11 Bankruptcy. Counsel will monitor bankruptcy and file Proof of Claim on behalf of CalSTRS.

CalSTRS v. Museum Company (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant has breached lease by failing to pay rent. Unlawful Detainer has been filed and served on defendant seeking monetary damages.

CalSTRS v. Track n Trail (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant filed bankruptcy and has closed store and vacated property. Advisor is seeking rejection of lease through Bankruptcy Court to allow re-leasing of premises. Proof of claim has been filed on CalSTRS behalf.

CalSTRS v. Island Nut (2000) CalSTRS Counsel: Ernie Zachary Park. Tenant has filed Chapter 7 Bankruptcy. CalSTRS has filed proof of claim for lost rents and an abandonment of the lease by tenant to obtain possession of space.

CalSTRS v. United Artists (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant has breached lease via non-payment of rent and filed Chapter 7 Bankruptcy. Court will require tenant to accept or reject lease under bankruptcy laws.

CalSTRS v. Natural Wonder (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant has filed Chapter 11 Bankruptcy and has advised landlord that they will vacate space. Tenant has turned possession of space back to CalSTRS.

CalSTRS v. Let's Talk Telephone Warehouse (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant has filed Chapter 11 Bankruptcy and has filed a bankruptcy plan stating they will assume lease. A proof of claim for the rent arrearage has been filed. Tenant has closed store and vacated building. Unlawful Detainer action will be pursued once Bankruptcy Court grants relief from Automatic Stay.

CalSTRS v. Toys International (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant breached lease via non-payment of rent. Unlawful Detained action filed and served on tenant. Tenant subsequently filed a Chapter 11 Bankruptcy and has rejected the lease in its bankruptcy petition. A proof of claim has been filed on behalf of landlord.

CalSTRS v. KCET Store of Knowledge (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant has filed a Chapter 11 Bankruptcy and rejected the lease in its bankruptcy petition. Tenant has vacated property and turned possession back to landlord.

CalSTRS v. Lids Corporation (2001) CalSTRS Counsel: Ernie Zachary Park. Tenant filed Chapter 11 Bankruptcy and has rejected lease in its bankruptcy petition. Tenant has vacated premises and turned possession back to landlord. A proof of claim has been filed on behalf of CalSTRS, awaiting distribution of claims from Bankruptcy Court. **Tenant is now requesting court to allow assignment of lease and amend "use" clause to which advisor has filed objection.**

***CalSTRS v. Tiny Computers (2002)** CalSTRS Counsel: Ernie Zachary Park. Tenant has breached lease via non-payment. Unlawful detainer action has been filed on behalf of CalSTRS.

COASTAL TOWERS

CalSTRS v. Jeffrey Seizer (2001) CalSTRS Counsel: Adrienne Promoff. Tenant breached lease via failure to pay rent and has vacated property. Legal action initiated to collect amount owed under lease. Tenant has promised to pay full amount owing but has not made payment. Tenant has vacated property. Advisor is attempting to negotiate a settlement with tenant.

CalSTRS v. Access Worldwide (2001) CalSTRS Counsel: Adrienne Promoff. Tenant breached lease via non-payment of rent. Tenant has vacated building and move to another location. Unlawful detainer is being pursued, seeking monetary judgment against tenant.

***CalSTRS v. Phoenix Investments (2002)** CalSTRS Counsel Adrienne Promoff. Tenant is late with rental payment but is protected from creditors under court order as a result of Bankruptcy. Advisor will proceed with legal action to evict upon relief from court order.

Dallas Tower

CalSTRS v. Vista Stores (2001) CalSTRS Counsel: Jenkins & Gilchrist. Tenant has filed Bankruptcy (Chapter 11) and returned a portion of their space, which has been re-let to another tenant. Tenant (Vista) is paying rent on balance of space. Advisor will monitor.

CalSTRS v. Dallas County Tax Assessor (2001) CalSTRS Counsel: Geary, Porter & Donora. Tax assessor set the property tax assessment higher than property value. Advisor, through our tax consultant filed appeal and received a reduction in value of \$1

million dollars. Further appeals are being pursued through litigation.

551 Madison

CalSTRS v. Becker and Company (2001) CalSTRS Counsel: Greenberg and Trauwig. Tenant breached lease via non-payment of rent. Unlawful Detained has been served on tenant. Tenant has signed a stipulation for possession of premises and judgment for rent and costs. Tenant paying arrearage under a payment schedule. Advisor will monitor payments by tenant.

The Concourse

CalSTRS v. Executrain (2001) CalSTRS Counsel: King and Nordinger. Tenant breached lease via failure to pay rent. Unlawful Detained action has been filed and served on tenant. Court date set for September 28, 2001. Tenant has vacated building and space has been relet. Monetary judgment will be pursued.

PROPERTY ADVISOR: Lend Lease

PAN AM BUILDING

CalSTRS v. Fidelity Management (2001) CalSTRS Counsel: Bendet, Fidell, Sakai & Lee. Tenant has breached lease via non-payment. Legal action initiated to regain possession of the space and for money judgment. **Judgment obtained from court. Advisor has been unable to find guarantor and is recommending writing off the account as un-collectable.**

CalSTRS v. Laser Eye Institute (2001) CalSTRS Counsel: Bendet, Fidell, Sakai & Lee. Tenant has allowed Mechanics Liens to be placed against property in violation of lease. Legal Counsel working with tenant to have liens removed.

Anaheim Plaza Shopping Center

CalSTRS v. Vista Eyecare. (2000) CalSTRS Counsel: Cox, Castle & Nicholson. Tenant has filed Chapter 11 Bankruptcy. Counsel is monitoring bankruptcy proceeding to see if tenant will accept or reject lease.

CalSTRS v. Kenny Rogers (2001) CalSTRS Counsel: Cox, Castle & Nicholson. Tenant failed to develop property and is in default under agreement to pay monthly rental fees. Guarantor of

payments, Roasters Corp., under the lease has filed bankruptcy. Once disputes of creditors have been resolved, Bankruptcy Court will distribute to creditors. **Disputes among senior creditors have delayed distributions from the court.**

Moody v. CalSTRS et al (2001) CalSTRS Counsel: Legal counsel at Royal Insurance. Motor vehicle accident allegedly occurred in parking lot of Wal-Mart. Counsel has filed answer on behalf of CalSTRS and cross-complaint against Wal-Mart. Case is in initial discovery stage. Attorney will seek dismissal of CalSTRS from case as alleged accident occurred on Wal-Mart property. **Matter has been settled with CalSTRS having no financial liability. Release and Settlement documents are being processed with the court.**

Davies Pacific Center

Roastandy v. CalSTRS (2000) CalSTRS Counsel: Matter has been tendered to Insurance Company for defense. Plaintiff alleges that she tripped on the steps on the exterior of the building because she didn't see steps. Pre-conference hearing and arbitration (non-binding) is ongoing.

CalSTRS v. Snapshot Photo (2001) CalSTRS Counsel: Bendet, Fidell, Sakai & Lee. Tenant has defaulted under lease via non-payment and vacated premises. Advisor is attempting to re-let space to mitigate damages. Once space is re-let, legal action will be commenced against tenant.

University Office Park

Washington v. CalSTRS (1999) CalSTRS Counsel: Hardy, Erich, Brown and Wilson. Plaintiff claims a slip and fall injury in the parking lot. Matter has been sent to law firm retained by the insurance carrier (Royal Insurance) for representation in defense of CalSTRS. Cross-complaints have been filed against the Management Company and security company on behalf of CalSTRS. Matter has been delayed due to Plaintiff retaining new counsel. Discovery is ongoing. Plaintiff and defendant Able Engineering have retained new counsel. No new trial date has been set as of this date.

Bay Colony

Shared Communications Services (SCS) v. CalSTRS (2000) CalSTRS Counsel: Morgan, Lewis and Bockius. SCS and the prior owner of this property had a contract, which allowed SCS to store its

communications equipment and operations in the building. SCS alleges that CalSTRS interfered with its access to its equipment and SCS has had ongoing litigation with the prior owner relating to their contractual relationship. CalSTRS has an indemnification from the prior owner of the property, which was stated in the Purchase Agreement. Settlement negotiations have failed. CalSTRS has requested prior owner to defend action and counsel has been retained by seller WHTR on behalf of CalSTRS. The Court has rejected the parties request to enforce a Settlement Agreement entered by the parties and has re-set the matter for trial. Discovery is ongoing and CalSTRS has retained separate counsel to protect its interest. The seller of the property has accepted the tender of defense of this claim and will pay legal fees associated with the defense. **Negotiations to settle this case have been unsuccessful. The case will proceed to trial with the seller of the property (WHTR) paying all expenses of litigation.**

Brisbane Industrial Portfolio

***CalSTRS v. George Lithograph (2002)** CalSTRS Counsel: Cox, Castle & Nicholson. Tenant has filed bankruptcy under Chapter 11. Tenant has petitioned court to extend deadline to accept or reject lease.

Center Point Plaza

CalSTRS v. CCS Mortgage (2000) CalSTRS Counsel: Schenk, Annes, Brookman & Tepper. Tenant has abandoned property and fails to pay rent. Judgment for possession obtained, attempt to obtain money judgment ongoing.

McGuire v. CalSTRS et al. (2001) CalSTRS Counsel: Garretson & Santara (appointed by Insurance Co.) Plaintiff alleges a slip and fall in front of the K-mart store in the plaza. The matter has been turned over to the insurance company to defend. Discovery has been initiated in the case.

***CalSTRS v. K-Mart (2002)** CalSTRS Counsel: Kelly, Drye, & Warren. K-Mart has filed for bankruptcy protection under Chapter 11 for purposes of reorganizing. Tenant continues to pay post-petition rents. Counsel will monitor bankruptcy proceeding.

Little Orchard/Benecia Macara

CalSTRS v. G.P.Graphics (2001) CalSTRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease via non-payment, abandoned the premises and abandoned personal property. Tenant has also sub-let the property with out permission of CalSTRS. Advisor has removed property and is performing an asset search to determine the appropriate legal action. **Personal property of tenant has been sold. Feasibility of further legal action being determined.**

Non-Real Estate Investment Related Litigation

CalMicro Devices Litigation (1995) CalSTRS Counsel: Hogan & Hartson by Joseph Hassett. The federal trial court accepted the settlement proposed by the parties, which resulted in a partial recovery of damages and the savings of many millions of dollars in attorneys' fees. The former CEO of the company has been convicted of securities fraud and was ordered on December 8, 1998 to make partial restitution to the class by the conveyance of company stock valued at approximately \$3.75 million and by the assignment to the class of the \$2 million in proceeds of officers and directors insurance. This order is subject to appeal. In addition, the CEO is subject to personal liability in the original class action. Judge Walker heard arguments on our motion for Summary Judgment against the CEO on Thursday, June 3. Thereafter, CalSTRS and ColPERA entered into a tentative settlement agreement with the former CEO (Chan Desaigoudar) pursuant to which Mr. Desaigoudar would convey to all of the class all of the shares under his control. A token number of these shares (3.293% of the total) will be held back and returned to him if he is exonerated in the criminal case. Mediation was held in San Francisco on April 24, 2000 in an effort to resolve the issues that kept this settlement from being finalized. No settlement was reached, but discussions are ongoing.

On August 25, 2000, the Ninth Circuit Court of Appeals reversed Chan Desaigoudar's conviction for securities fraud and insider trading. We are awaiting a determination regarding the potential retrial of Mr. Desaigoudar and evaluating the impact of the reversal, if any, on the civil litigation against him.

On January 24, 2001, CalSTRS and ColPERA, acting on behalf of the class, entered into a Settlement Agreement with Desaigoudor. Judge Walker has scheduled a hearing to consider the approval of

the settlement on May 24, 2001. Under the terms of the agreement, the class would receive 1,018,221 shares of CalMicro stock out of a total of 1,518,221 shares previously owned by Desaigoudor that have been held in an escrow account pending resolution of this litigation. The total number of shares received by the class is subject to a cumulative maximum closing value of \$12,000,000, above which the number of shares is reduced to that which equals this closing value. Depending upon the price per share at the time of distribution to the class, if the Settlement is approved the proceeds combined with previous settlements against the Company may fully compensate the class for its losses.

On May 24, 2001, Judge Walker approved the settlement and stated his appreciation for CalSTRS' and ColPERA's role in this case. Contrary to its representations to Judge Walker that it would not appeal the settlement, Cal Micro subsequently appealed the settlement to the 9th circuit. Hogan and Hartson have moved to dismiss the appeal. Distribution of the settlement proceeds has been stayed pending resolution of the appeal. **CalMicro has reached a final settlement agreement terminating its appeals. This will allow the settlement proceeds to be distributed to the class.**

EBS V. Barclays Global Investors, N.A. et al (1999) CalSTRS Counsel: To be determined (class action) A class action has been filed in the United States District Court for the District of Delaware of which CalSTRS has been noticed as a possible defendant in this action. Plaintiff, EBS Litigation L.L.C. has brought action against all persons or entities who received at least 55 shares of the June 30, 1995 transfer of shares of Dave and Busters, Inc. as a result of a spin-off from Edison Brothers Stores, Inc. Plaintiff's allege that at the time of the spin-off, Edison Brothers Stores, Inc. was not legally authorized to give stock and that the stock was given without adequate consideration by defendants. Legal staff will monitor case.

Note: * indicates new litigation cases added to Quarterly Report.